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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

HELLS CANYON PRESERVATION	)	
COUNCIL, an Oregon nonprofit	)	No. 02-291-HU
corporation; THE WILDERNESS	)	
SOCIETY, a national nonprofit	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	OPINION AND ORDER
UNITED STATES FOREST	)	
SERVICE, an agency of the	)	
United States Department of	)	
Agriculture,	)	
	)	
Defendant.	)	
_____	)	

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4 Attorneys for defendant

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6 KING, Judge:

7 The matter before the court is plaintiffs' motion under Rule  
8 15(d) of the Federal Rules of Civil Procedure to supplement their  
9 Second Amended Complaint, adding claims challenging the defendant's  
10 Record of Decision (ROD) approving a new Comprehensive Management  
11 Plan (CMP) for the Hells Canyon National Recreation Area (HCNRA).

12 Plaintiffs brought this action against defendant United States  
13 Forest Service (USFS) on March 8, 2002, challenging its management  
14 of the Kirkwood Road within the HCNRA, and asserting seven claims  
15 for relief. Plaintiffs filed an Amended Complaint on March 21,  
16 2002, and a Second Amended Complaint on April 22, 2002.

17 The first claim for relief asserted in the Second Amended  
18 Complaint was for violation of the Hells Canyon National Recreation  
19 Area Act (HCNRA Act), 16 U.S.C. § 460gg-4, alleging that the USFS  
20 violated the HCNRA Act by reconstructing the Kirkwood Road to make  
21 it easily accessible to motorized vehicles. Plaintiffs asserted  
22 that such motorized use was not compatible with the preservation of  
23 the Hells Canyon rare and endemic plant species and the rare  
24 combinations of diverse ecosystems.

25 The second claim for relief was also for violation of the  
26 HCNRA Act, alleging that the USFS's reconstruction of the Kirkwood  
27 Road was incompatible with the HCNRA Act's mandate to preserve or

1 restore the Hells Canyon Archaeological District, including the  
2 Kirkwood Bar Complex and the Kirkwood Historic Ranch.

3 The third claim for relief was asserted under the National  
4 Environmental Policy Act (NEPA), alleging that the USFS had  
5 violated NEPA in reconstructing the Kirkwood Road and reopening it  
6 to all-terrain vehicle (ATV) use without analyzing the impact of  
7 this decision through an Environmental Impact Statement (EIS) or an  
8 Environmental Assessment (EA).

9 The fourth claim, also brought under NEPA, alleged that the  
10 USFS failed properly to analyze its actions of reconstructing the  
11 Kirkwood Road and reopening it to motorized use.

12 The fifth claim asserted that the USFS decision to reconstruct  
13 the Kirkwood Road violated the 1982 CMP.

14 The sixth claim asserted that the USFS had failed to emphasize  
15 biological controls, as required by the Wallowa-Whitman Land and  
16 Resource Management Plan (Forest Plan), when controlling noxious  
17 weeds on the Kirkwood Road.

18 The seventh claim alleged that the USFS violated its own  
19 regulation, 36 C.F.R. § 292.44, prohibiting the use of motorized  
20 equipment on wild and scenic river segments, when it made the  
21 decision to allow reconstruction of the Kirkwood Road.

22 The eighth claim asserted that the USFS violated the National  
23 Historic Preservation Act by failing to consider the effects of the  
24 Kirkwood Road reconstruction on historic values.

25 The ninth claim asserted that the USFS violated the HCNRA Act  
26 by failing to close the Kirkwood Road to motorized vehicles because  
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1 such use was incompatible with the preservation of rare and endemic  
2 plant species and rare combinations of ecosystems.

3 The tenth claim also challenged the USFS's decision to allow  
4 motorized access to the Kirkwood Road under the HCNRA Act, alleging  
5 that the decision violated its mandate to preserve and restore  
6 historic sites associated with the Kirkwood area.

7 The eleventh claim asserted that the USFS violated the 1982  
8 CMP by failing to close the Kirkwood Road to motorized vehicles  
9 when such use could cause resource damage.

10 The parties filed cross-motions for summary judgment on all  
11 claims. Claims eight and ten were dismissed after being withdrawn  
12 by plaintiffs. On November 21, 2003, the court awarded plaintiffs  
13 summary judgment on claims one, two, three, four, five and six, and  
14 awarded USFS summary judgment on claim seven. On April 8, 2004, the  
15 court awarded plaintiffs summary judgment on claim nine. On January  
16 12, 2005, the court granted USFS's motion for reconsideration based  
17 on the United States Supreme Court's decision in Norton v. Southern  
18 Utah Wilderness Alliance, 542 U.S. 55 (2004), and concluded that  
19 claims six, nine and eleven were barred on jurisdictional grounds.  
20 Accordingly, the court awarded USFS summary judgment on claims six,  
21 nine and eleven. The court then prepared to move to the remedies  
22 phase of the litigation.

23 Meanwhile, on July 21, 2003, the Final Environmental Impact  
24 Statement (FEIS) and ROD for the 2003 CMP was signed. The 2003 CMP  
25 supersedes the 1982 CMP. Plaintiffs now seek to supplement the

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1 Second Amended Complaint with additional factual allegations and  
2 three new claims.

3 The allegations are that 1) the new CMP authorizes  
4 unrestricted motorized use of the Kirkwood Road, except for the  
5 lowest 100 feet where such use is prohibited during a three-month  
6 anadromous fish spawning window; 2) during the remaining nine  
7 months of the year, motorized vehicles remain authorized to drive  
8 the Kirkwood Road from the rim of Hells Canyon down its  
9 approximately six miles to its terminus at the Kirkwood Ranch,  
10 including three crossings of Kirkwood Creek; 3) the ROD and FEIS  
11 eliminate provisions from the 1982 CMP requiring the USFS to close  
12 the Kirkwood Road seasonally to motorized use when resource damage  
13 would otherwise occur; and 4) plaintiffs and other entities  
14 administratively appealed the ROD for the new CMP in a timely  
15 manner, but the USFS denied the appeals on May 26, 2004.

16 The additional claims are as follows. The twelfth claim is for  
17 violation of the HCNRA Act, alleging that the ROD management  
18 direction for Kirkwood Road, authorizing the use of motorized  
19 vehicles, and allowing future construction of a bridge and  
20 associated structures for motorized vehicles, as well as its  
21 elimination of 1982 CMP provisions requiring road closure to  
22 motorized vehicles when resource damage is occurring, violates the  
23 HCNRA Act's mandate to manage the area in a manner compatible with  
24 the preservation of rare and endemic plant species and rare  
25 combinations of outstanding and diverse ecosystems.

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1 The thirteenth claim is also asserted under the HCNRA Act, and  
2 alleges that the ROD management direction for Kirkwood Road fails  
3 to comply with the HCNRA Act's mandate to manage the area in a  
4 manner compatible with the preservation and restoration of historic  
5 sites, because historically, ATV recreational use within the area  
6 has not occurred.

7 The fourteenth claim is asserted under NEPA, and alleges that  
8 the EIS prepared by the USFS to accompany the ROD for the new CMP  
9 fails to show that the USFS took the requisite hard look at the  
10 environmental impacts of its decision to approve unrestricted  
11 motorized recreation along the upper part of the Kirkwood Road.

## 12 Standards

13 Rule 15(d) provides:

14 **Supplemental Pleadings.** Upon motion of a party the court  
15 may, upon reasonable notice and upon such terms as are  
16 just, permit the party to serve a supplemental pleading  
17 setting forth transactions or occurrences or events which  
18 have happened since the date of the pleading sought to be  
19 supplemented. Permission may be granted even though the  
original pleading is defective in its statement of a  
claim for relief or defense. If the court deems it  
advisable that the adverse party plead to the  
supplemental pleading, it shall so order, specifying the  
time therefor.

20 Rule 15(d) is a tool of judicial economy and convenience, and  
21 its use is therefore favored; it is liberally construed absent a  
22 showing of prejudice to the defendant. Keith v. Volpe, 858 F.2d  
23 467, 473, 475 (9<sup>th</sup> Cir. 1988); see also LaSalvia v. United Dairymen  
24 of Arizona, 804 F.2d 1113, 1119 (9<sup>th</sup> Cir. 1986) (purpose of Rule  
25 15(d) is to promote as complete an adjudication of the dispute  
26 between the parties as possible). Rule 15(d) permits the bringing  
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1 of new claims, the joinder of new parties, and the allegation of  
2 transactions, occurrences and events which occur after the action  
3 has begun, to promote the economical and speedy disposition of the  
4 controversy. Griffin v. County School Board, 377 U.S. 218, 226-27  
5 (1964); Keith, 858 F.2d at 473. The court has broad discretion in  
6 deciding whether to allow the filing of supplemental pleadings.  
7 Matter of Wade, 969 F.2d 241, 250 (9<sup>th</sup> Cir. 1992).

### 8 **Discussion**

9 Plaintiffs contend that supplementation will allow the court  
10 to adjudicate completely the legality of the USFS's management of  
11 the Kirkwood Road in a single legal action. They argue that this  
12 issue has consistently formed the basis of the litigation, and that  
13 they should be given the opportunity, before the remedy phase of  
14 the case begins, to assert jurisdictionally sound challenges to the  
15 USFS management of the Kirkwood Road. Plaintiffs argue further that  
16 supplementation will further the goals of Rule 15(d), judicial  
17 economy, because the court is already familiar with the facts and  
18 law underlying this controversy, and many of the facts and legal  
19 arguments that are relevant to the supplemented claims have already  
20 been developed and briefed. They point out that if they were  
21 required to file a separate action, the result would be additional  
22 cost and delay to the parties and waste of judicial resources,  
23 since a different judge would have to familiarize himself or  
24 herself with the underlying facts and legal arguments of the new  
25 action unless the two cases were consolidated.

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1       The USFS disputes plaintiffs' argument that the supplemental  
2 claims and allegations constitute a continuation of this  
3 litigation, and that a challenge to the 2003 CMP is unrelated to  
4 the originally challenged agency action, which was the toilet  
5 replacement project and reconstruction of Kirkwood Road. The USFS  
6 points out that the USFS's management of the Kirkwood Road over  
7 time is not a final agency action; rather, the toilet replacement  
8 and road reconstruction in 2000 was one agency action, and the FEIS  
9 and ROD for the 2003 CMP was another. The USFS argues that Rule  
10 15(d) cannot be used to introduce a "separate, distinct, and new  
11 cause of action," relying on Planned Parenthood of Southern Arizona  
12 v. Neely, 130 F.3d 400, 402 (9<sup>th</sup> Cir. 1997).

13       Upon consideration of these arguments, I conclude that the  
14 motion should be denied. Although the fact that the supplemental  
15 pleading states a new cause of action is not a bar to its  
16 allowance, it is nonetheless a factor to be considered by the court  
17 in the exercise of its discretion. Keith, 858 F.2d at 474. The  
18 proposed supplemental complaint asserts new claims which challenge  
19 a different agency action-- the promulgation of a new CMP-- with a  
20 different administrative record. I am not persuaded that my  
21 familiarity with the underlying facts, statutes and legal precedent  
22 of this case is necessarily transferable to the claims asserted in  
23 the supplemental complaint, such that allowing the plaintiffs to  
24 supplement will promote judicial efficiency.

25       Plaintiffs' motion to supplement the Second Amended Complaint  
26 (doc. # 191) is DENIED.



1 IT IS SO ORDERED.

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3 Dated this 26th day of April, 2005.

4 /s/ Garr M. King

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6 Garr M. King  
7 United States District Judge  
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